

Certificate of Transmission by Mailing, Facsimile, or Electronic Transmission (37 C.F.R. §1.8)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is:

☐ being deposited with the U.S. Postal Service on the date indicated below and with sufficient postage addressed to Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

☐ being facsimile transmitted to the Commissioner for Patents, U.S.P.T.O. (Fax No. 571-273-8300) on the date indicated below.

☒ being transmitted to the Commissioner for Patents via the U.S.P.T.O. Electronic Filing System on the date indicated below.

Signature: /Barbara G. McClung/ Reg. No. 33,113

Date: 2 July 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: PEERY, J.R. ; et al.

Confirmation No.: 7202

Serial No.: 10/645,293

Art Unit: 1618

Filing Date: 20 August 2003

Examiner: SAMALA, J.R.

Title: SUSTAINED DELIVERY OF AN ACTIVE AGENT USING AN IMPLANTABLE SYSTEM

RESPONSE TO NON-FINAL OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is in response to the Office action in the above-referenced application, mailed 19 June 2009. Response to the Office action is due, with no extensions, on 19 September 2009. No fees are believed due; however, the Commissioner is hereby authorized to charge to Deposit Account No. **504212** any fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 which may be required by this paper, with the exception of the payment of the issue fee. Reconsideration of the application in view of the following remarks is respectfully requested.

Introductory Comments

I. Summary of the Office Action.

In the Office action, mailed 19 June 2009, claims 51-55, 57-60, 73, and 75-87 are rejected for the following reasons:

The Examiner rejected claims 51-52 on the ground of non-statutory obviousness-type double patenting asserting that the claims are unpatentable over claims 1, 6 and 7 of U.S. Patent No. 5,985,305.

The Examiner rejected claims 51-52, 55, 57-60, 75 and 87 on the ground of non-statutory obviousness-type double patenting asserting that the claims are unpatentable over claims 1-2 and 5-10 of U.S. Patent No. 6,261,584.

The Examiner rejected claims 51-54 and 76-86 on the ground of non-statutory obviousness-type double patenting asserting that the claims are unpatentable over claims 1-3 and 10-11 of U.S. Patent No. 5,728,396.

These rejections are believed to be overcome by the accompanying Terminal Disclaimers.

II. Overview of the Claims.

Claims 51-55, 57-60, 73 and 75-87 are pending in the application. No amendments are made to the claims by this paper. For ease of reference, the pending claims are presented herein below (after the signature page) in the section titled "Complete Listing of the Claims."